

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PAULETTE S.,

Claimant,

vs.

SAN ANDREAS REGIONAL CENTER,

Respondent.

OAH No. 2005100790

DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in Gilroy, California, on March 29, 2006.

Claimant's mother represented Claimant, who was present.

Jacques Maitre, Director's Designee for Fair Hearings, represented Respondent San Andreas Regional Center.

The record closed on March 29, 2006.

ISSUE

Whether Claimant is eligible for regional center services because she is either mentally retarded or because she suffers from a substantial developmental disability that is related to mental retardation and/or that requires similar treatment.

FACTUAL FINDINGS

1. Claimant, born August 27, 1985, is 20 years of age. She resides with her family in Gilroy and her mother applied for regional center services on her behalf. San Andreas Regional Center (SARC) found her not eligible, she appealed, and this hearing followed.

2. Claimant's mother reports that Claimant's birth was difficult. The umbilical cord was wrapped around her neck and she suffered from lack of oxygen. "Failure to thrive" was a label used to describe Claimant, who was late in achieving developmental milestones. When she started preschool at age three, she did not yet speak. Although Claimant was placed in a general education first grade classroom, that was the last time that she did not receive the support of special education.

3. Annual Individualized Education Plans (IEPS) and assessments from her high school years reveal the following pertinent information:

a. May 4, 2000, age 14.8, grade 8- An assessment by school psychologist Eric Simonsen notes that Claimant has been assigned to a special day class since 6th grade. Testing reveals borderline to low-average range of intelligence and achievement scores within the deficit range. A previous diagnosis of attention deficit hyperactivity disorder and present difficulty focusing on class work were noted.

b. November 3, 2000, age 15, grade 9- Claimant was enrolled in three special day classes. She was found to have weak expressive and receptive language skills and inattentiveness while learning when in general education classes.

c. November 26, 2001, grade 10- A note states that the "complexity of her disability requires an SDC [special day class] placement for all academic core curriculum due to serious reading disability."

d. November 1, 2002, grade 11- A note states that an SDC is necessary to meet her educational needs for all core curriculum classes (English, Math, Science and Social Studies) because of an auditory processing disorder.

4. Intelligence testing of Claimant over the years has revealed Full Scale IQ scores ranging from 71 to 80. On October 7, 2004, Elaine Alster, a learning disability specialist, issued a screening report regarding Claimant's eligibility for services from Gavilan College. Testing she administered, the most recent available, resulted in the following scores on the Wechsler Adult Intelligence Scale-III: Verbal IQ 74; Performance IQ 75 and Full Scale IQ 72.

A Full Scale IQ score of 72 is well above 60, a score reflecting mental retardation. It is within the borderline range of intelligence. The range of IQ testing results such as Claimant has exhibited is consistent with specific learning disabilities.

5. Claimant's mother testified that, despite a very positive mind-set that she has encouraged, Claimant requires her assistance for many aspects of daily living. This is entirely true regarding Claimant's medical needs, including appointments and taking her medications regularly. Claimant weighs only 89 pounds and cannot afford to lose any weight. Although Claimant can take public transportation, her skills in this area are very limited. For example, she takes the bus one mile to school and back. She has a bank account

and Claimant's mother is actively working with her regarding money management. Claimant's mother is also concerned about Claimant's social naiveté. She is very trusting and kind-hearted and appears immature for her age. Claimant's mother worries what would happen to Claimant without her help.

6. On the positive side, Claimant is described as well-socialized, if somewhat shy. She is friendly and helpful to others, and enjoys working with animals. She maintains a circle of friends. Claimant's records reflect a motivated and enthusiastic attitude.

7. Neil A. Hersh, Ph.D., a SARC staff psychologist, reviewed Claimant's records, test scores, and intake assessment notes. He administered the Vineland-II (a self-reporting test of adaptive functioning) to Claimant and to her mother. Dr. Hersh persuasively opined that Claimant functions within the borderline range of intellectual functioning and shows good adaptive functions. Hence, he concluded that she is not mentally retarded and does not require treatment similar to that required by the mentally retarded.

LEGAL CONCLUSIONS

1. The governing law is found in Welfare and Institutions Code section 4500 et seq., commonly known as the Lanterman Act. At section 4501 the Legislature declares the State of California's responsibility for persons with developmental disabilities. The Supreme Court has stated that the purpose of the Act:

Is two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.

2. The Act does not apply to every citizen who suffers a physical or mental handicap and is in need of assistance. Rather, a person must meet specific criteria as described in section 4512(a):

(a) 'Developmental disability' means a disability which originates before an individual attains age 18, continues, or can be expected to continue indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not

include other handicapping conditions that are solely physical in nature.

3. Claimant has applied for eligibility under the category of mental retardation. A diagnosis of mental retardation requires satisfaction of three criteria:¹

A. Significantly sub average intellectual functioning, defined by an IQ of about 70 or below obtained by assessment with a standardized testing instrument, and

B. Significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional intellectual skills, work, leisure, health and safety, and

C. Onset before age 18.

4. The evidence did not demonstrate that Claimant has mental retardation. Her intelligence test results have consistently been above 70. Moreover, it was not shown that Claimant has significant limitations in at least two areas of adaptive functioning skills.

5. A developmental disability not resulting from one of the four listed conditions is commonly called the “fifth category.” Claimant has also applied pursuant to this category, which provides eligibility despite normally disqualifying IQ scores where it can be shown that an individual is in fact functioning at an adaptive and cognitive level as if he or she were mentally retarded, and/or that the services he or she requires are consistent with those needed by a mentally retarded individual. It is not necessary that a claimant present as if mentally retarded in every aspect. If that were the case, there would have been no need to specify additional criteria for acceptance. However, the condition must be substantially disabling, that is, one that causes a very major impairment, and it must have originated prior to age 18.

6. Further guidance in assessing eligibility is found in Title 17, California Code of Regulations section 54001:

(a) ‘Substantial Handicap’ means a condition which results in major impairment of cognitive and/or social functioning. Moreover, a substantial handicap represents a condition of sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential.

¹ Diagnostic criteria are taken from the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV).

(b) Since an individual's cognitive and/or social functioning are many-faceted, the existence of a major impairment shall be determined through an assessment which shall address aspects of functioning including, but not limited to:

- (1) Communication skills;
- (2) Learning;
- (3) Self-care;
- (4) Mobility;
- (5) Self-direction;
- (6) Capacity for independent living;
- (7) Economic self-sufficiency.

7. These seven areas are examined to assist in the determination of whether the applicant might be a person suffering from a condition similar to or requiring services similar to mental retardation. Although intelligence testing is an important part of the analysis, it contributes only a portion of the picture. Evidence from all domains relevant to actual ability to function in society must be examined. The successful applicant would then qualify for services under the "other" or "fifth" category.

8. Additional information regarding eligibility is found in title 17, California Code of Regulations, section 54000(c). It provides that where the handicapping condition is solely physical in nature and not associated with neurological impairment, is solely due to a psychiatric disorder, or consists solely of learning disabilities, it is not a developmental disability for the purposes of the Lanterman Act.

9. The evidence also did not demonstrate Claimant's eligibility pursuant to the "fifth category." She does not function in the community like a mentally retarded person. Rather, she is a person with borderline to low-average cognitive abilities and learning disabilities.

DISCUSSION

Claimant's mother and teacher would like her to have the type of help provided by SARC and Claimant could use assistance. It appears that she suffers from very serious learning disabilities that have made learning extremely difficult for her. Claimant's mother is very concerned about her ability to be truly independent and her rate of progress towards this goal. However, it is not possible, given the evidence presented, to conclude that Claimant qualifies for regional center services pursuant to the Lanterman Act. The regional center system was not designed to and legally cannot assist everyone who could benefit from assistance.

Claimant does not suffer from mental retardation and she did not establish that she has a global impairment similar to mental retardation and/or one that requires similar services. Claimant has true difficulties, but she also has noteworthy strengths. It is hoped that she will

continue to seek out and take advantage of government programs and services that are available to assist her to learn, grow and achieve her goals.

CONCLUSION

Claimant is not eligible for regional center services due to mental retardation or pursuant to the “fifth category.”

ORDER

Claimant Paulette S’s appeal is denied.

DATED: _____

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.